

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.34125 of 2007

1. IRFAN AHMAD WARSI , SON OF MAQBOOL AHMAD WARSI
2. MAQBOOL AHMAD WARSI ,SON OF LATE SHEIKH DHISA SEKH GSIA AHMAD
3. MAJDA KHATOON , WIFE OF MAQBOOL AHMAD WARSI
ALL RESIDENTS OF GULJARBAGH, POLICE STATION-
BIKRAMGANJ, DISTRICT-ROHTAS.

----- **PETITIONERS**

Versus

1. THE STATE OF BIHAR
2. NAZNEEN BANO , WIFE OF IRFAN AHMAD , DAUGHTER
OF ZIAUDDIN KHAN, RESIDENT OF VILLAGE-MAHUARI,
POLICE STATION-DAWATH , DISTRICT-ROHTAS

----- **OPP.PARTIES**

For the petitioners: M/S S.Alamdar Hussain , and
S.R. Asghar Nazmi, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For Opp.Party no.2: M/ S Jai Prakash Singh, and
Dharmendra Kumar Singh, Advocate

ORDER

The petitioners along with others, who have been arrayed as
accused in Bikramganj P.S.Case No.62 of 2007, registered under
Section 498 A I.P.C. and 3 / 4 of Dowry Prohibition Act, through this
application have prayed for quashing of the prosecution including the
F.I.R. of the said police case.

It has been submitted on behalf of the petitioners that prior
to lodging of the instant F.I.R. at about 5.15 P.M. on 9.5.2007 , a
complaint petition bearing Complaint Case No.312 of 2003 had been
filed by one Ziauddin Khan who happens to be the father of the
present informant making verbatim and similar allegations based on
identical facts and circumstances.

The prosecution case, in brief, is that the informant herein Nazneen Bano, impleaded as Opp.Party no.2 herein, was married to Irfan Ahmad, petitioner no.1, on 19.5.2002 and ever since the marriage a demand for a motorcycle in dowry was being made by her husband and his parents, who for non-fulfilment thereof started torturing her in various ways and she had to spend several nights without food. Holding of several panchayatis did not have any effect as the demand for dowry was reiterated to the father on several occasions. She has also said that ever since the occurrence, she had left the parental home. On this premise, it was submitted by the learned counsel for the petitioners that by the very fact of facing a complaint case, which was progressing, the filing of the criminal case again on the same set of accused and same set of facts amounted to the petitioners facing “double jeopardy”, which in all circumstances is unwarranted being an abuse of the process of the court.

The learned counsel further sought to submit that the well settled law of this issue is that no person shall be tried for the same offence twice over.

The learned A.P.P. for the State is not in a position to rebut the situation and although notice was issued to Opp.Party no.2 who appeared and also contested the application, no satisfactory answer could be given by them so as to counteract the submissions advanced by the learned counsel for the petitioners.

In this context the provision of Article 20 of the Constitution of India becomes relevant. Clause (2) thereof guarantees

that no person be prosecuted and punished for the same offence more than once and the word “ AND” between the words “ prosecuted” and “ punished” as observed by the Supreme Court in S.A. Venkatraman –Vrs. Union of India (AIR 1954 SC 375) is used here in the ordinary conjunctive sense.

In the instant case, a proceeding in the complaint case is already going on, where the informant of Bikramganj P.S. Case no.62 of 2007, Nazneen Bano is a witness. It also appears that in the police case, the complainant of Complaint Case no.312 of 2003, Ziauddin Khan, the father of Nazneen Bano, figures as a witness. It, thus, transpires that the petitioners are being made to suffer prosecution for the same offence twice over, which not only is an abuse of the process of the court but also vexatious and a case for harassment.

Such vexatious prosecution being unwarranted and an abuse of the process of the court cannot be allowed to continue and is required to be set aside.

Due regard being had to the facts and circumstances of the case, I am compelled to quash the prosecution arising out of the F.I.R. of Bikramganj P.S. Case No.62 of 2007.

Accordingly, the application is allowed since the petitioners are already facing prosecution in the complaint case.

(Abhijit Sinha, J)

Patna High Court, Patna
Dated: the 3rd December, 2008
Nawal Kishore Singh/A. F. R.